No. 83-280

IN THE

Supreme Court of the United States

October Term, 1983

UTILITY TRAILER SALES COMPANY,

Appellant,

vs.

MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, and JERRY BOWERS,

Appellees.

ON APPEAL FROM THE COURT OF APPEAL OF THE STATE OF CALIFORNIA.

BRIEF OF AMICI CURIAE MERCHANTS AND MANUFACTURERS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, CALIFORNIA MANUFACTURERS ASSOCIATION, AND CALIFORNIA ASSOCIATION OF EMPLOYERS IN SUPPORT OF JURISDICTIONAL STATEMENT.

CHARLES G. BAKALY, JR.,
400 South Hope Street,
Los Angeles, Calif. 90071-2899,
(213) 669-6000,

Counsel of Record for Amici Curiae, Merchants and Manufacturers Association, National Association of Manufacturers, California Manufacturers Association, and California Association of Employers.

Of Counsel:
O'MELVENY & MYERS,
JOEL M. GROSSMAN,
400 South Hope Street,
Los Angeles, Calif. 90071-2899,
(213) 669-6000.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes Page

No. 83-280

IN THE

Supreme Court of the United States

October Term, 1983

UTILITY TRAILER SALES COMPANY,

Appellant,

vs.

MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, and JERRY BOWERS,

Appellees.

BRIEF OF AMICI CURIAE MERCHANTS AND MANUFACTURERS ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, CALIFORNIA MANUFACTURERS ASSOCIATION, AND CALIFORNIA ASSOCIATION OF EMPLOYERS IN SUPPORT OF JURISDICTIONAL STATEMENT.

Description of Interest of Amici Curiae.

The Merchants and Manufacturers Association is a non-profit California corporation whose purpose is to augment the human resources management of member firms. Over 2,600 companies of varying sizes and in diverse industries are members of the Merchants and Manufacturers Association. These members collectively employ over one million employees in the State of California.

The National Association of Manufacturers is a non-profit voluntary business organization organized under the laws

of the State of New York. It has a membership of over 13,000 manufacturing and related business concerns which, in the aggregate, produce an estimated 80% of all goods manufactured in the United States.

The California Manufacturers Association is a non-profit corporation representing approximately 800 manufacturers and processors in California. Its primary function is representing its members before the California Legislature and before various regulatory agencies which affect manufacturers.

The California Association of Employers is a non-profit association of small and medium-sized employers in California. Its membership of approximately 1,600 California employers collectively employs over 35,000 workers.

For purposes of convenience, all four amici will be referred to collectively as "the Associations" throughout this brief.

Many of the Associations' members are parties to collective bargaining agreements with unions in California, and throughout the United States. Because of the great diversity of their members, the Associations have a strong interest in preserving the federal policy of allowing an individual employer and an individual union to arrive at their own unique solutions to the problems they face through good faith bargaining. The decision below is a frontal attack on this policy. The court below held that *all* California employers must reimburse employees for lost tools, even if the collective bargaining agreement, as interpreted by an arbitrator, provides to the contrary.

The Associations also strongly believe that only a uniform federal labor law will produce stability in labor relations. Federal preemption of contrary state laws is essential to the preservation of this stability. The Associations therefore

oppose any state regulations which impose a single uniform provision upon all employers and unions, no matter what their individual needs or interests. State laws which interfere with the free flow of collective bargaining are by definition harmful to employers such as the Associations' members.

Additionally, many of the Associations' members are parties to collective bargaining agreements which call for final and binding arbitration of disputes. These members strongly oppose any erosion of the important principle that the results of final and binding arbitration pursuant to a collective bargaining agreement may not be relitigated in a de novo court action. The instant case represents a dramatic departure from that principle. Although an arbitrator had rejected Mr. Bowers' claim for reimbursement for lost tools, the court below held that he could pursue a court action seeking reimbursement, thereby rendering the arbitration a useless exercise in futility. For these reasons, the Associations support the Jurisdictional Statement of Appellant Utility Trailer Sales Company.

Consent of Parties.

The parties to this action have consented to the filing of this brief by amici curiae. The parties' written consent will be filed with the Clerk of the Court concurrently.

Statement of the Case.

Amici curiae respectfully adopt the Statement of the Case set forth in the Jurisdictional Statement of the Appellant Utility Trailer Sales Company, as well as Appellant's description of the Parties Below, Opinions Below, Jurisdiction, Constitutional Provisions and Statutes, and the Question Presented.

THE QUESTION IS SUBSTANTIAL.

I.

A State May Not Dictate the Terms of a Collective Bargaining Agreement to Unions or Employers Engaged in Commerce.

In the instant case, the State of California has in effect dictated one of the terms of the collective bargaining agreement between the parties, *viz.*, a requirement that the employer will reimburse employees for lost tools. As the record makes clear, and as a neutral arbitrator found, the union proposed tool loss reimbursement, and the parties bargained about this issue. The union did not achieve its demands, and no tool loss reimbursement article appears in the collective bargaining agreement. A neutral arbitrator therefore determined that under the collective bargaining agreement tool reimbursement is not required. Thus, the State has here invalidated the results of collective bargaining, and imposed a term upon the parties directly contrary to the results of negotiation.

This case raises a substantial question of federal preemption, for federal labor law preempts state attempts to prescribe terms and conditions of employment. The question is substantial, for if a state can dictate *one* term of a collective bargaining agreement, in this case tool loss reimbursement, then a state can dictate *all* terms of a collective bargaining agreement. If the decision below stands, then there is nothing to stop a state legislature from imposing other terms on the parties. For example, notwithstanding the terms of a collective bargaining agreement, a state could require an employer to agree to a union security clause, a grievance and arbitration system, bereavement leave or sick pay. For that matter, a state could enact a "Uniform Collective Bargaining Agreement Act," in which all terms and

conditions of employment would be set forth, and the only blanks left for the parties to fill in would be their names.

Such a system was clearly not intended by Congress. In enacting Section 8(d) of the National Labor Relations Act, 29 U.S.C. § 158(d), Congress made clear that while parties were obligated to bargain in good faith, neither party could be forced by the National Labor Relations Board (NLRB) or the courts to agree to a particular proposal or to make a particular concession. Similarly, this Court has consistently declared that *states* may not require an employer to include a particular term in a collective bargaining agreement. As the Court explained, "state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB . . ." *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 153 (1976). Such state laws are therefore preempted by federal labor law.

In the leading case of *Teamsters v. Oliver*, 358 U.S. 283 (1959), the Court held that an Ohio antitrust law could not be applied "to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain." 358 U.S. at 295. The Court explained that "there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions." 358 U.S. at 296.

This principle has been reaffirmed in several post-*Oliver* decisions. In *Machinists v. Wisconsin Employment Relations Commission*, *supra*, the Court held that federal law preempted a state agency's ruling prohibiting a union from refusing to work overtime. The Court, quoting *Oliver*, noted that "[s]ince the federal law operates here, in an area where its authority is paramount, to leave the parties free, the

inconsistent application of state law is necessarily outside the power of the state." 427 U.S. at 153.

The *Oliver* principle was cited in dicta in *Malone v. White Motor Corp.*, 435 U.S. 497 (1978). The Court there held that a pre-ERISA Minnesota statute which regulated the terms of a pension plan was not preempted, but *only* because of Congressional intent to preserve state authority in this limited area. But for such specific intent, the statute would be preempted under the principle set forth in *Oliver*. Indeed, the Court quoted at length from *Oliver*, noting that "[t]he Oliver opinion contains broad language affirming the independence of the collective-bargaining process from state interference." 435 U.S. at 513.

More recently, in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), the Court again cited *Teamsters v. Oliver* with approval in dicta. The Court held that, following the enactment of ERISA, a New Jersey law regulating pension benefits was preempted. After determining that the state law was preempted by ERISA, the Court went on to note that even aside from ERISA, the state law would have been preempted by federal labor law:

> "Where, as here, the pension plans emerge from collective bargaining, the additional federal interest in *precluding state interference with labor-management negotiations* calls for pre-emption of state efforts to regulate pension terms. See Teamsters v. Oliver." (Citation omitted). 451 U.S. at 525. (Emphasis added)

Just as federal law preempts state regulation of pension plans, so too it preempts regulation of other terms and conditions of employment about which unions and management are directed to bargain. Tool reimbursement, as the court below acknowledged, is a condition of employment, about which the parties must bargain. In fact, as the arbitrator noted in a letter to the parties, many collective bargaining

agreements contain provisions concerning tool reimbursement. (See Appellant's Jurisdictional Statement at 40.) Because tool loss reimbursement is a "subject matter as to which federal law directs [the parties] to bargain," state laws dictating the results of their bargaining are preempted.

In summary, for more than 20 years since *Oliver*, the Court has consistently held that a state may not regulate the substantive terms of a collective bargaining agreement. In the instant case, California Labor Code § 2802, as construed by the California Court of Appeal, directs employers to reimburse employees for lost tools even if, as in this case, the collective bargaining agreement as interpreted by an arbitrator does not provide for reimbursement. Unless such laws are preempted, the federal labor policy enunciated in *Oliver* and its progeny would be severely undercut. Moreover, as Appellant points out in its Jurisdictional Statement, state courts need direction from this Court in enforcing the preemption principles enunciated in *Oliver*. State courts have allowed state regulations to stand in spite of the principles in *Oliver*. This case provides an opportunity for the Court to correct these erroneous decisions.

A related reason why the federal question is substantial in the view of the Associations is that collective bargaining, as Congress envisions it, is a flexible system. Federal labor policy recognizes that there is no one ideal collective bargaining agreement, and no ideal set of terms and conditions of employment. Rather, individual employers, and the representatives of their employees, together determine the appropriate conditions of employment to meet their specific needs. As this Court has stated:

> "It must be realized that collective bargaining, under ***a system where the Government does not attempt to control the results of negotiations***, cannot be equated with an academic collective search for truth — or even

> with what might be thought to be the ideal of one. The parties — even granting the modification of views that may come from a realization of economic interdependence — still proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest." *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960).

"Ordering and adjusting" the competing interests of employers and employees by voluntary agreements is "the keystone of the federal scheme to promote industrial peace." *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962). Because ours is a system in which "the Government does not attempt to control the results of the negotiations," California and other states cannot be permitted to legislate specific terms and conditions of employment.

The instant case is a perfect example of how the collective bargaining system created by Congress is meant to work. The union sought to attain a specific proposal: tool loss reimbursement. As a neutral arbitrator determined, the parties bargained about the issue, the union could not attain its proposal, and the union nevertheless signed the contract. If this issue is important enough to the union, it may raise it again. Perhaps it will make a concession in another area, or engage in a lawful strike to achieve this proposal. If it does so, it will be up to the company to determine how significant this provision is to them. In any event, it is up to these two parties to work the problem out. That is the system Congress created.

The California law at issue here would undermine this system. It would require *all* employers to provide tool loss reimbursement, whether or not the issue was important to them or to their employees, whether or not the union had given some *quid pro quo* to obtain it, and, as in the instant case, whether or not it was contrary to the parties' agreement. Such a law ignores the most fundamental principle

of federal labor law, which is that the parties should determine their own agreements. Whether or not tool loss reimbursement is a good idea is quite beside the point. If a system in which the Government does not attempt to control the results of collective bargaining is to be preserved, then each employer and union should be free to determine if tool loss reimbursement, or any other specific term, is a good idea in their own situation.

II.

Labor Code § 2802 Does Not Involve Employees' Health or Safety, or Establish Minimum Standards to Protect Employees' Welfare.

Appellees will no doubt contend that the federal preemption principles set forth above do not apply to state laws which protect employees' health and safety or which establish minimum standards of employee welfare. Appellees may cite *Terminal Association v. Trainmen*, 318 U.S. 1 (1943) for the proposition that the state, under its police power, may regulate employees' health and safety notwithstanding contrary principles of federal preemption. Additionally, Appellees may cite the California Supreme Court's decision in *Industrial Welfare Commission v. Superior Court*, 27 Cal. 3d 690, 166 Cal. Rptr. 331 (1980) for the proposition that a state may adopt "minimum standards to protect the welfare of workers." 27 Cal. 3d at 728. These cases, however, have no applicability to § 2802, which is neither a health and safety regulation nor a minimum standard of employee welfare.

First, the question of whether or not an employer must reimburse an employee for lost tools is purely an economic one: whose insurance carrier will pay for the loss, or who will pay in the absence of insurance. The question is economic only, and has no relationship to an employee's health

or safety. Thus, the health and safety exception recognized in *Terminal Association* has no application to this case.

Second, the statute also does not establish minimum standards for employee welfare.* In this case, Labor Code § 2802, as construed by the Court of Appeal, requires an employer to reimburse an employee for the value of the employee's own tools. The statute does not provide for reimbursement up to the reasonable value of standard replacement tools. Rather, the statute as the court construes it would require reimbursement no matter what the value of the particular set of tools. This is not minimum protection: it is a free-of-charge insurance policy, which would insure the loss of even the most expensive tools. The record below reveals, in fact, that Mr. Bowers' tools were much more costly than a standard set of tools. As the court below construed the statute, full reimbursement was still required. That hardly constitutes "minimal" protection.

Moreover, in 1980, the California Industrial Welfare Commission, whose duty it is to establish minimum standards of protection, *Industrial Welfare Commission v. Superior Court, supra*, 27 Cal. 3d at 700, issued an elaborate set of Wage Orders which established many different minimum standards for employee protection. The Commission's Orders did *not* call for tool loss reimbursement under the circumstances of this case.

---

*The Associations do not in any way concede that an exception to federal preemption exists for state laws establishing "minimum standards." This Court has never recognized such an exception. The California Supreme Court's determination that the "health and safety" exception recognized in *Terminal Association* extends to any "minimum standards" regulation is, in the Associations' view, wholly unwarranted. Nevertheless, for purposes of this Brief, the Associations are willing to assume that a "minimum standards" exception exists because, as set forth below, even if such an exception exists, it does not encompass tool loss reimbursement.

Industrial Welfare Commission Order 1-80-3, Section 9(B) requires an employer to *provide and maintain* tools for certain employees, if the tools are necessary to perform the job. However, an employee whose wages are more than two times the minimum wage "may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." Mr. Bowers earned more than two times the minimum wage. Therefore, the Industrial Welfare Commission, in establishing minimum standards, did not require the employer to *provide and maintain* tools for Mr. Bowers. It is nonsensical to assert that *providing* the tools is not a minimum standard but *replacing* lost tools is. Thus, the Commission itself, in its expertise, did not deem tool loss reimbursement for an employee such as Mr. Bowers a minimum standard. For all these reasons, it is respectfully submitted that the "health and safety" exception and the "minimum standards" exception to federal preemption have no applicability to the instant case.

III.

Assuming Arguendo That § 2802 Is Not Preempted, the Arbitrator's Decision Denying Reimbursement Precludes De Novo Judicial Review.

Assuming arguendo that Labor Code § 2802 is not preempted, there is another reason why this case raises a substantial question of federal labor law. The instant dispute was initially submitted by the union to binding arbitration under the terms of the collective bargaining agreement. The neutral arbitrator denied the grievance, holding that the union had sought tool loss reimbursement in collective bargaining, the parties had bargained about the subject, and the union did not achieve this objective. The arbitrator therefore ruled that reimbursement was not required. (See Appellant's Jurisdictional Statement at 35.)

The union then brought a court action in order to avoid the very arbitrator's decision which it had agreed would be binding. Seeking a "second bite at the apple," the union asked a California court to undo the results of binding arbitration. Well-settled principles of federal labor law preclude such an action. Ever since the Court's decisions in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) and *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960) and its companion cases ("*Steelworkers Trilogy*"), it has been a fundamental principle of federal labor law that if the parties submit a dispute to binding arbitration, the arbitrator's decision is final and precludes a de novo court action seeking the same relief.

Since the *Steelworkers Trilogy* was decided, the Court has twice recognized a narrow exception to this principle. In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), the Court held that because an arbitrator had no expertise in construing Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"), an arbitrator's decision that the employer had not violated the non-discrimination clause of a collective bargaining agreement would not necessarily mean that it had not violated Title VII. Therefore, an employee could pursue a Title VII cause of action in federal court even after an arbitrator had determined that his employer did not violate the non-discrimination clause of the collective bargaining agreement. Similarly, in *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981), the Court held that an arbitrator's decision that the company did not violate the collective bargaining agreement by refusing to compensate its drivers for time spent inspecting their trucks would not preclude a private action under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("F.L.S.A."), for unpaid wages.

In each of these two cases, the Court recognized the federal policy favoring arbitration of labor disputes, citing the *Steelworkers Trilogy*, and stressed the narrowness of its holding. The Court explained that an arbitrator's ruling would not preclude court action in these cases because of the strong federal policy underlying both Title VII and the F.L.S.A. As the Court explained in *Barrentine:*

> "While courts should defer to an arbitral decision where the employee's claim is based on rights arising out of the collective bargaining agreement, different considerations apply where the employee's claim is based on rights arising out of *a statute designed to provide minimum substantive guarantees to individual workers*." 450 U.S. at 737. (Emphasis added)

The Court noted that the arbitration award was not binding in *Gardner-Denver* "because Congress had granted aggrieved employees access to the courts, and because contractual grievance and arbitration procedures provided an inadequate forum for enforcement of Title VII rights . . ." *Id.*, 450 U.S. at 738. The Court explained that each statute includes an enforcement scheme granting individual employees access to court to remedy violations.

The Court of Appeal below erroneously analogized the instant case to *Alexander v. Gardner-Denver*. Contrary to the Court of Appeal's assumption, this Court has never held that a *state* law would nullify the *Steelworkers Trilogy* principle of binding arbitration. To the contrary, this Court spoke at great length in both *Gardner-Denver* and *Barrentine* of the important *federal* policies underlying Title VII and the F.L.S.A. No such principles apply to an arbitrator's construction of *state* law.

Additionally, § 2802 is clearly not comparable to either Title VII or the F.L.S.A. Unlike Title VII and the F.L.S.A., the California Labor Code does not expressly provide a

private right of action for violation of § 2802. Thus, the analogy to *Gardner-Denver* breaks down. The right to indemnification for tool loss is surely not as necessary for individual protection as the right to be employed free of discrimination or the right to earn a minimum wage. Indeed, as noted earlier, California's Industrial Welfare Commission did not require tool reimbursement for employees such as Mr. Bowers in its Wage Orders.

For these reasons the narrow exception recognized by the Court in *Gardner-Denver* and *Barrentine* does not extend to this case. While arbitration may be an "inadequate forum for enforcement of Title VII rights," 450 U.S. at 738, it is a perfectly adequate forum in which to determine the question of tool loss reimbursement. The general rule of the *Steelworkers Trilogy* that the parties are bound by their agreement to arbitrate the dispute must therefore control. To paraphrase Chief Justice Burger's dissenting opinion in *Barrentine*, it makes neither good sense nor sound law to read the broad language of *Gardner-Denver* — written in a civil rights discrimination case — and the broad language of *Barrentine* — written in an F.L.S.A. minimum wage case — to govern a routine dispute over lost tools, a matter traditionally entrusted by the parties' arm's-length bargaining to binding arbitration.

It is important that the Court take this occasion to reaffirm the *Steelworkers* principle, and to underscore the narrowness of the *Gardner-Denver* and *Barrentine* holdings. Otherwise, state courts may misapply *Gardner-Denver*, as the court below did, and thereby undermine the continuing authority of the *Steelworkers Trilogy*. The Court should take this opportunity to make clear that, while an arbitrator may not be competent to determine "the public law considerations" underlying the F.L.S.A. or Title VII, an arbitrator is per-

fectly able to construe and enforce Labor Code § 2802 or similar state laws. The Court of Appeal's ruling allowing a de novo court action must therefore be reversed.

Conclusion.

For all the foregoing reasons, it is respectfully submitted that this case presents a substantial federal question, and that the Court should note probable jurisdiction of this case, and reverse the decision below.

Dated: September 14, 1983.

Respectfully submitted,

CHARLES G. BAKALY, JR.,

Counsel of Record for Amici Curiae, Merchants and Manufacturers Association, National Association of Manufacturers, California Manufacturers Association, and California Association of Employers.

Of Counsel:

O'MELVENY & MYERS,

JOEL M. GROSSMAN.